89-467 (1)

Supreme Court, U.S.
FILED
JUL 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

NUMBER

In the Supreme Court of the United States,
October Term - - - 1989.

Leo M. Mullen, M.D.
Petitioner

versus

Robert Maxwell, Robert B. Skinner, Herbert Underwood,
Frank E. Simmerman, Gar B. Nickerson and
Robert H. McWilliams, and Steptoe and Johnson

Respondents

Case Number - - 88 - 2158 - - - CT of Appeals 4th Circuit
Case Number CA - NO - 86 - 056 - M

Petition for writ of certiorari to the Supreme Court
Of the United States

Thru the 4th Court of Appeals, U.S. Court House 1/2

Richmond, Virginia, 23219

Leo M. Mullen, M.D. 4443 Paseo Blvd. K.C., MO. 64110

Phone - - 1-816-921-5411

Emergency Number - Nites - - 1-913-362-2602

Last Order of the court - 4-28-1989

24 pp

QUESTIONS PRESENTED FOR REVIEW BY THE SUPREME COURT OF U.S.

1. THE plaintiff is prevented from getting JUSTICE because of the fact that the JUDGES, MAXWELL, THE MAGISTRATE JUDGE AND JUDGE KIDD ARE able to be influenced by the local firm and the plaintiff is unable to get the case before the court without a dismissal for no reason other that the favoritism shown in the WEST VIRGINIA DISTRICT. The plaintiff has a legitimate case but by reason of this favoritism and really payoff the judges are throwing the cases out as they are filed. In 1985 after filing in 1981 JUDGE ROBERT MAXWELL decided to show favoritism allegedly because of a bent mind and then the second case was filed which is the present case. In the meantime the plaintiff asked the court to review the original case because it was obvious the JUDGE MAXWELL had not given any time for the trial as requested by the plaintiff. The cases involved are No. 85-11044 it cir May 14th, 1985 and the present case which is being appealed. This is case No. 882158 which final order was entered 4-28-1989 but allegedly lost by the court and not returned to the ELKINS OFFICE. SE LETTER of 7-12-1989 which was signed by L. KAYE MALLOW Deputy Clerk who has stated that neither the motion filed on 4-28-1989 no the answer order of 4-28-1989 can be found in the file and the date is important because this filing is due on 7-27-1989. This in based on the denial on 4-28-1989. Thus under the 90 day rule this filing is due on 7-27-1989 to be timely.

2. THE three judges involved have been shown to be involved with the firm that is being sued and are unwillng to give anytime for the plaintiff and have dismissed so far. The court has said it does not have jurisdiction in case no. 88-2047 which is the present cast there is general evidence of attempts to throw the case to the local law

firm and not give the case a chance to tried. The appellate court has erred in that it is entirely opposite to the decision of LINK vs WABASH RAILROAD decided by the 4th court of appeals fault myself for this and that which is obviously only to throw the case out. RULE 60 B-6 applies because that number applies to fraud cases and to the fact there is no time limit.

3. CERTIORARI should be granted because the decisions of the three judges is an attempt to circumvent the law and throw the case out without trial when they know that a case exist. The plaintiff has spent a great deal of money and has been subjected to ridicule. the granting of the WRIT of CERTIORARI would make the justice prevail.

4. As previously indicated, no where in either Appellants brief or Appellee's brief does either party address itself to the "facts" regarding the alleged failure to prosecute, and while the Appellant may well have done so out of lack of legal skill, the Appellee has obviously not dealt with the facts in order to advance his rather unusual notions of what those facts are, and what they mean. Both briefs omit:

(a) The fact that as early as Sept. 1982 Dr. Mullen had indicated that he was ready for trial - - he stated through counsel to "Please set this matter for trial at the earliest convenience". Motion filed on Sept. 8, 1982, and titled

NOTICE OF INTENT TO PROSECUTE CASE

(b) The fact that the Court indicated in its response to the Appellant's Proposed Scheduling Order, when the Court rejected it, that the Court was assigning the matter in early 1983 to Magistrate Core, for a pre-trial conference, and be tried in the early part of May, 1983 in Martinsburg, W.Va. (Court's letter to Peter J. Koppe rejecting proposed scheduling order)

(c) The fact that at the November, 1984 pre-trial hearing, held by conference call, the Court, in the person of Magistrate core, did indicate that he had the matter for pre-trial since 1983, but that he had no great interest in holding the pre-trial out of some distaste he had for the case.

(d) The fact that although D. Mullen was clearly physically ill in December, 1984 the Court treated his absence from the December 19, 1984 hearing as an attempt at further delay, and dismissed the matter with prejudice, despite the message from counsel to the Court that Dr. Mullen would personally try the case in the Spring with the Courts permission.

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It has to be noted that the last order has been lost but was dated 4-28-1989 and the court lost the last papers and in the robbery of my office the dupiicate was lost and there return of the file to ELKINS W. VA. on May 15th, 1989 is partial confirmation that the order was put in the file and lost in the transfer to ELKINS WEST VIRGINIA confirmed by the letter of the deputy clerk dated 7-12-89 from L. KAYE MALLOW.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

THE PLAINTIFF HAS BEEN ATTEMPTING TO GET JUSTICE IN THE NORTHERN DISTRICT of WEST VIRGINIA but has been thwarted by the fact that the judges are throwing the case to the local lawyers because of bias and prejudice against the plaintiff who has no influence in the area. IT is obvious legitimate case by the three judges involved who are actually in cahoot with the local lawyers and as a matter of fact the firm of STEPTOE and JOHNSON are defending THE HON JUDGE MAXWELL so it is obvious that bais an prejudice exist and that the three judges involved have bent minds and have refused to set the case with any court which would no be influenced by the local lawyers who are generally considered to be buttering up the judges since it is such a small area that the judges are unwilling to give the invader a fair trail, but have dismissed everything that comes before them. THE plaintiff appeared with his secretary and outlined the facts before the said magistrate judge appointed by JUDGE KIDD who, of course had no intention of giving a fair trial and thus dismissed everything without trial and JUDGE KIDD went along with this failure to give justice. Although there is obvious fraud and favoritism involved the magistrate judge refused to accept this and went ahead with his won basis of throwing the case out.

CERTIORARI should be granted because the plaintiff has a legitimate case but cannot get the case before the court in any jurisdiction but the NORTHERN DISTRICT of WEST VIRGINIA and the 4th court of APPEALS is so baised and prejudiced with its own jurisdictions that nothing can be accomplished in the interests of justice. IN the interests of justice the plaintiff hereby request an investigation of the judges

involved and return of the case for trial before a tribunal that is different than the NORTHERN DISTRICT of WEST VIRGINIA. THE plaintiff did attempt to get JUDGE MAXWELL off the case originally but he refused and threw the case to the local lawyers who had been giving to his EASTERN OFFICE when they were riding together. Naturally when they ride in the same car to MARTINSBURG as had been done the past there is a relationship which should not exist and this must be investigated.

IN the interest of justice and to get rid of the favouritism in the fact that the judges are so baised in favor of the local law firm the WRIT OF CERTIORARI should be granted and the case returned for trial to a jurisdiction where favoritism will not prevail.

TABLE OF AUTHORITIES

Cases

Rules

88-2158

NUMBER 88-2958 DISTRICT COURT - - C/A-N0. 86-056-M.
IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LEO M. MULLEN, M.D. PLAINTIFF APPELLANT
v.
ROBERT MAXWELL, ROBERT B. SKINNER, HERBERT UNDERWOOD,
FRANK E. SIMMERMAN AND GARY W. NICKERSON DBA STEPTOE
AND JOHNSON AND ROBERT H. MCWILLIAMS

DEFENDANTS APPELLEES
MOTION FOR REHEARING AND FOR HEARING or rehearing en BANC.

THE APPELLANT PRO SE STATES THAT THE ORDER OF MARCH 23rd, 1989 arriving 3-31-89 overlooks the law and material facts and that the appellant had at the time his own secretary present which should be heard on oral arguments. ALSO there is an apparent failure to consider the charges which are really criminal against the parties and this decision of the court allows corruption to prevail in a legitimate case. The points involved herein are that the plaintiff has a legitimate case and fraud and perjury are used with court judges getting either bribed or showing severe bias and prejudice. THE appellant relies on MACLIN vs. SPECTOR FREIGHT SYSTEMS 476-FED-2nd 1979. Also HAINES vs. KERNER - 92-SUP CT. 594 U.S. 519 - 30 L. ED. 2nd 562. THE LAWS OF THE STATE OF WEST VIRGINIA have been ignored and in the original case it was JUDGE ROBERT MAXWELL who broke the law but is getting by for failure of the court to consider any violations of the judges. THE subsequent judges went along with corruption involved. SEE also U.S. vs. KARAHALIAS - CA - 2nd - 953- 205 F 2nd, 331-FORCIBLES obstacles to justice have allowed fraud and

to prevail CRIMIDAS ESTATE means relief is needed in the APPELLATE

prevail CRIMIDAS ESTATE means relief is needed in the APPELLATE ASKS FOR re-hearing with witness being present and also rehearing an banc to get justice in a fraud case.

LEO M. MULLEN, M.D. pro se, 4443 PASEO BLVD. K.C., MO. 64110 - 1-816 921-5411 OR 921-5412.

CERTIFICATION OF SERVICE

COPIES NO. 15 prepaid to the court in RICHMOND, VA. 23219 this 2nd day of APRIL - 89 and to the defendant APPELLEES at their respective locations. THE STEPTOE and JOHNSON FIRM. IT must noted that ROBERT MCWILLIAMS is now working for the CT.IN ELKINS WEST vs.

LEO M. MULLEN, M.D. PRO SE 4443 PASEO BLVD. K.C, MO. 64110 1-816-921-5411.

PER CURIAM:

Leo M. Mullen, M.D., appeals from the district court's order denying relief under 42 U.S.C. & 1983. Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. **Mullen v.McWilliams**, C/A No. 86-056-M N.D.W. Va. July 28, 1988). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2158

LEO M. MULLEN, M.D.

Plaintiff - Appellant,

versus

4-28-89

ROBERT MAXWELL, HON., et al,

Defendants - Appellees

ORDER

There having been no request for a poll of the court on the petition for rehearing en banc, it is accordingly ADJUSTED and ORDERED that the petition for rehearing en banc shall be, and it hereby is, denied.

The panel has considered the petition for rehearing and is of opinion it is without merit.

It is accordingly ADJUDGED and ORDERED that the petition for rehearing shall be, and it hereby is denied.

With the concurrences of Judge Chapman and Judge Butzner.

4-28-89

/S/H.E. Widner, Jr.

For the Court

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES COURTHOUSE
TENTH & MAIN STREET
RICHMOND, VIRGINIA 23219

JOHN M. GREACEN
CLERK

TELEPHONE
(804) 771-2213
FTS 925-2213

April 28, 1989

Gary W. Nickerson, Esq.

STEPTOE & JOHNSON

United National Center East

P.O. Box 2190

Clarksburg, WV 26302

Frank Edward Simmerman Jr., Esq.

STEPTOE & JOHNSON

Union National Center East

P.O. Box 2190

Clarksburg, WV 26302

Herbert George Underwood, Esq.

STEPTOE & JOHNSON

Union National Center East

P.O. Box 2190

Clarksburg, WV 26302

Leo M. Mullen M.D.

4443 Paseo Boulevard

Kansas City, MO 64110

Re: 88-2158 Mullen v. McWilliams

CA-86-056-M

Dear Counsel and Dr. Mullen:

Enclosed is a copy of an order filed April 28, 1989 denying a petition for rehearing this case.

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEAL NO. 85-1104

LEO M. MULLEN,

Appellant

vs.

ROBERT B. SKINNER,

Appellee

RESPONSE OF PETER J. KOPPE TO MOTION OF APPELLEE ROBERT SKINNER IN ATTEMPTING TO STRIKE AMICUS CURIAE BRIEF

Comes now PETER J. KOPPE, and for his Response to the Motion to Strike the Amicus Cuirae Brief, filed by Appellee, ROBERT SKINNER, states and alleges as follows:

1. That the proposed Amicus Brief was filed by PETER J. KOPPE, a non-party to the action, and that said PETER J. KOPPE was formerly counsel to Appellant, and not licensed to practice law before the Courts of Virginia not admitted to practice before the 4th Circuit Court of Appeals, but that said PETER J. KOPPE is completely familiar with the entire history of the litigation herein referred to, having actively served as counsel since 1982, and prior to that, was familiar with Federal litigation as well as the previous West Virginia litigation.

2. That attorney and affiliate, FRANK E. SIMMERMAN, JR. wa privy to one telephone conversation in which the case was discussed by attorneys for the Plaintiff Appellant LEO M. MULLEN, and was in attendance at one hearing, where the case

JUDGMENT UNITED STATES COURT OF APPEALS

for the
Fourth Circuit

No. 88-2158

LEO M. MULLEN, M.D.

Plaintiff - Appellant

vs.

ROBERT MAXWELL, HON.; ROBERT B. SKINNER; HERBERT UNDERWOOD; FRANK E. SIMMERMAN; GARY W. NICKERSON, d/b/a Steptoe & Johnson; ROBERT H. MCWILLIAMS

Defendants - Appellees

APPEAL From the United States District Court for the Northern District of West Virginia,

THIS CAUSE came on to be heard on the record from the United States District court for the Northern District of West Virginia,

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, Affirmed.

CLERK _____

A True Copy, Test to:

John M

By _____
Deputy Clerk

was dismissed, and now professes to have sufficient knowledge of the facts and the law in the case to term the Amicus Curiae Brief to be "erroneous" and "highly partisan".

3. That said proposed Amicus Curiae Brief does not attack the "integrity" of the District Court, but rather questions whether the Court abused its discretion in dismissing this action, and raises the issue of whether the Court itself should have or could have taken steps to call the action for trial.

4. As previously indicated, no where in either Appellants brief for Appellee's brief does either party address itself to the "facts" regarding the alleged failure to prosecute, and while the Appellant may well have done so out of lack of legal skill, the Appellee has obviously no dealt with the facts in order to advance his rather unusual notions of what those facts are, and what they mean. Both briefs omit:

(a) The fact that as early as Sept. 1982 Dr. Mullen had indicated that he was ready for trial - - he stated through counsel to "Please set this matter for trial at the earliest convenience". Motion filed on Sept. 8, 1982, and titled **NOTICE OF INTENT TO PROSECUTE CASE**

(b) That fact that the Court indicated in its response to the Appellant's Proposed Scheduling Order, when the Court rejected it, that the Court was assigning the matter in early 1983 to Magistrate Core, for pre-trail conference, and be tried in the early part of May, 1983 in Martinsburg, W.Va. (Court's letter to Peter J. Koppe rejecting proposed scheduling order)

(c) The fact that at the November, 1984 pre-trial hearing, held by conference call, the Court, in the person of Magistrate Core, did indicate that he had the matter for pre-trial since 1983, but that he had no great interest in holding the pre-trial out of some distaste he had for the case.

(d) The fact that although Dr. Mullen was clearly physically ill in December, 1984 the Court treated his absence from the December 19, 1984 hearing as an attempt at further delay, and dismissed the matter with prejudice, despite the message from counsel to the Court that Dr. Mullen would personally try the case in the Spring with the Courts permission.

PER CURIAM:

Leo M. Mullen appeals from a district court order denying motions he filed in two of his district court cases and imposing partial sanctions pursuant to Fed. R. Civ. P. ll. For the reasons stated below we affirm the district court's decision in No. 85-1104 (4th Cir. May 13, 1985) (unpublished). On 17th October 1986 Mullen filed a motion which the district court constructed as one filed pursuant to Fed. R. Civ. P. 60 (b). After a hearing before a magistrate at which Mullen failed to produce any evidence to support his claims of improper judicial and attorney conduct, the district court, having found a Fed. R. Civ. P. ll violation, imposed sanctions. On review, we find no abuse of discretion in either the district court's denial of Rule 60 (b) relief for the district court's imposition of partial Rule ll sanctions. **United States vs. Williams**, 674 F. 2d 310 (4th Cir. 1982); **Cabel vs. Petty**, 810 F.2d 463, 466, (4th Cir. 1987).

In No. 88-2046, the district court stayed proceedings in the case by order of 18th February 1987. On 18th January 1988, Mullen filed a motion seeking relief pursuant to Fe. R. Cov. P. 60 (b). The district court denied this motion over appeals from final orders. A final order is one which disposes of all issues in dispute as to all parties. It "ends the litigation on the merits and leaves nothing for the Court to do but execute the judgment". **Catlin vs. United States**, 324 U.S. 229, 233 and (1945). Because no "final judgment" was entered in the case, Mullen ought not to have filed his motion pursuant to Rule 60 (b) is not available prior to entry of judgment. That the district court purported to deny Rule 60 relief prior to entry of judgment. That the district court purported to deny Rule 60 relief prior to entry of judgment. That the district court purported to deny Rule 60 relief prior to entry of a judgment does

not change this conclusion. **Greene vs. Union Mutual Life Ins. Co.**, 764 F. 2d 19 (lst Cir. 1985).

We dispense with oral argument because the dispositive issues have recently been decided authoritatively.

No. 88-2046 - - **DISMISSED.**

No. 88-2047 - **AFFIRMED**

IN THE UNITED STATES COURT OF APPEALS, FOR THE FOURTH CIRCUIT

LEO M. MULLEN, M.D.

PLAINTIFF APPELLANT

vs. 88-2047.

ROBERT H. MCWILLIAMS, ROBERT MAXWELL,

HON. JUDGE, STEPTOE AND JOHNSON FIRM.

DEFENDANTS - APPELLEES

COMES NOW LEO M. MULLEN, M.D. PRO SE AND STATES TO THE COURT:

1. THE APPELLANT PRO SE Applies for a hearing en banc since it appears that the order of 6-29-1988 overlooks material facts and law involved in the decision at present and the decision of 1984. IN THE 1984 case the appellate court incorrectly applied the case LINK vs. WABASH RRD. - 370 - U.S. 626 - 92 - SUP COURT 1386 - - - - (1962) THE case filed and the appellant appeared in WEST VA. where DOUGLAS ROCKWELL was dismissed out. IT follows that THE HON. JUDGE MAXWELL either became baised and was bribed to dismiss the case in late 1984. THE case originally filed was meritorious and the fact that THE MAGISTRATE JUDGE FOUND NO evidence of misconduct is really a factor since he was merely like all of the judges in the NORTHERN district of WEST VIRGINIA going along with fraud, perjury and misconduct. THE court of appeals cannot become a party to this type of corruption which is evident. THE said APPELLANT hired two lawyers and yet the local lawyer sold out and became a party with the defendants which is not allowed in the court procedure. THE fact that ROBERT MCWILLIAMS appeared for the defendants is evidence enough of wrong doing

since the case was a legitimate case in 1980 and yet in 1984 JUDGE MAXWELL was guilty of abuse of discretion and thus this abuse continued with the MAGISTRATE and the other judges in the NORTHERN DISTRICT. THE transcript provides evidence of the fact that both judges were attempting to uphold JUDGE MAXWELL.

WHEREFORE the decision on number 88-2047 should be rereversed or an en banc hearing should be ordered for justice sake.

RESPECTFULLY SUBMITTED,

LEO M. MULLEN, M.D. PRO SE. 4443 PASEO BLVD. K.C., MO. 64110 - 1-816-921-5411. CER. OF SERVICE - - - - COPIES PREPAID TO THE COURT and to ROBERT H. MCWILLIAMS HERBERT UNDERWOOD, FRANK SIMMERMAN and GARY NICKERSON 7-11-1988. LEO M. MULLEN, M.D. PRO SE - 1-816-921-5411.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2158

LEO M. MULLEN, M.D.

Plaintiff - Appellant

vs.

ROBERT MAXWELL, HON.; ROBERT B. SKINNER; HERBERT UNDERWOOD; FRANK E. SIMMERMAN; GARY W. NICKERSON, d/b/a Steptoe & Johnson; ROBERT H. MCWILLIAMS

Defendants - Appellees

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. William M. Kidd, District Judge. (C/A No. 86-056-M)

Submitted: December 21, 1988

Decided: March 23, 1989

Before WIDENER and CHAPMAN, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Leo M. Mullen, M.D., Appellant Pro Se. Frank Edward Simmerman, Jr., Herbert George Underwood, Gary W. Nickerson (STEPTOE & JOHNSON) for Appellees.

Motion of 4-2-89 decided 4-28-89 but last by the least responding.

PARTIES TO THE PROCEEDINGS

1. HON ROBERT MAXWELL JUDGE WHO IS REPRESENTED BY THE SAME FIRM that he decided to dismiss for in the case in 1981 to 1985.

2. ROBERT H. MCWILLIAMS, ESQ who accepted a fee for service and did nothing and has been sued and had his case dismissed. HE is now working for the same court that dismissed his case.

3. HERBERT UNDERWOOD, FRANK E. SIMMERMAN and GARY W. NICKESON are members of the law firm of STEPTOE and JOHNSON who are representing JUDGE MAXWELL which is clearly error.

4. ROBERT B. SKINNER was sued and had his case dismissed by JUDGE MAXWELL originally after about 5 years.

CERTIFICATION OF SERVICE

Copies prepaid to the above and to the SUPREME COURT in WASHINGTON D.C. this 25th day of July 1989.

Leo M. Mullen MD Pro Se

LEO M. MULLEN, M.D.
4443 PASEO BLVD.
KANSAS CITY, MO. 64110
1-816-921-5411 or nites
913-362-2602.

Re-sent - 9-6-89.

Leo M. Mullen MD

Pro Se